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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|-------------------------|
| 09/828,226 | 04/09/2001 | Kevin A. McIntyre | 3598-2 | 5634 |
| 23117 | 7590 | 06/30/2006 | EXAMINER | |
| NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203 | | | | FELTEN, DANIEL S |
| ART UNIT | | PAPER NUMBER | | |
| 3693 | | | | DATE MAILED: 06/30/2006 |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/828,226 | MCINTYRE, KEVIN A. |
| | Examiner | Art Unit |
| | Daniel S. Felten | 3624 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 April 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,9-14,17 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1, 2, 9-14, 17 and 25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

1. Upon further consideration of the arguments presented in the Appeal Brief filed April 05, 2006, the application is hereby REOPENED to address the limitations said to be lacking in the Rickard reference yet have been previously presented as prior art in previous office actions and that clearly covers the argued limitations.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 9-14, 17 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rickard et al (US 6,112,189) in view of Micali (US 5,615,269)

*As per claims 1, 2, 9-14, 17 and 25, Rickard discloses receiving a lower limit price for a product from a seller (*offering party*), the buyer being unaware of the seller's lower limit price (see Rickard, fig. 13, Abstract, col. 2, lines 60-65., col. 3, lines 12-53., col. 6, lines 4-18., col. 7, lines 28-33; and col. 8, lines 10-19)*

--receiving an upper limit bid for the product from the buyer, the seller being unaware of the buyer's upper limit bid; (see Rickard, fig. 13, Abstract, col. 2, lines 60-65., col. 3, lines 12-53; col. 6, lines 4-18., col. 7, lines 28-33., and col. 8, lines 10-19),

--comparing the seller lower limit price and buyer upper limit (see 13, Abstract, "joint degree of satisfaction" or "mutual degree of satisfaction", col. 2, lines 60-65; col. 3, lines 12-53,, col. 6, lines 4-18., col. 7, lines 28-33., and col. 8, lines 10-19)

--if an overlap region exists between the seller lower limit price and the buyer upper limit bid, setting a maximum point for the product with the overlap region that is based on the lower limit and the 'upper limit bid (see Rickard, fig. 13, Abstract, col. 2, lines 60-65,. col. 3, lines 12-53; col. 6, lines 4-18., col. 7, lines 28-33., and col. 8, lines 10-19);

Rickard disclose a maximum point but fails to disclose a price point per se. Since the maximum point is related to mutual satisfaction and that one of the parameters for mutual satisfaction is price for a trades security, it would have been obvious for an artisan within the ordinary skill in the art at the time of the invention to incorporate price as one of the variables that the system would use to determine the negotiations between parties (particularly when trading securities). Thus an artisan at the time of the invention would employ such a variable being a notoriously old and well known negotiable feature which is conventionally used within the art. Thus a feature would have been an obvious expedient to one of ordinary skill in the art.

Rickard discloses several graphs which illustrate levels of trades satisfaction along with minimum satisfaction or no satisfaction regions (figs. 1-4) and also discloses automatically executing a scaled down version of desired trade for each security and preserving a relative volume mix among individual securities if adequate contra volume *does not exist* (see Rickard, col. 8, line 10 to col. 9, line33) which would invariably play a role in the location of an overlap

region, but fails to explicitly disclose if an overlap region does not exist between the seller and the lower limit price and the buyer upper limit bid, further processing the transaction without seller or buyer input (or blind) by setting a theoretical price point between the lower limit price and the upper limit bid.

Micali teaches a method of electronic communications between a first party and a second party enabling further processing of an electronic transaction without seller or buyer input (see blind negotiations" and "split the middle" col. 2, 11. 7-48). Since Rickard adjusts for volume changes (which are also linked to overlap and price), it would have been obvious for an artisan art the time of Rickard to have been familiar with the concept of "split the difference" to compensate for lack of volume in Rickard invention which was caused by lack of mutual satisfaction between buyers and sellers. Thus Rickard would automatically seek to "split the middle" or "split the difference" , as taught in Micali, to allow buyers and sellers to make transactions.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Felten whose telephone number is (571) 272-6742. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3624

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Daniel S Felten
Examiner
Art Unit 3624



DSF
June 23, 2006



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